

**AGREEMENT FOR  
PROFESSIONAL SERVICES  
(NON-FEDERAL FUNDING)**

This Agreement is entered into by and between the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, herein called "COUNTY," and Kevin Merk Associates, LLC, a California limited liability company whose address is 1330 Van Beurden Drive, Suite 103, Los Osos, CA 93402, herein called "CONSULTANT." This Agreement shall be effective as of the date it is fully executed by the parties.

The COUNTY department responsible for administering this Agreement is the Department of Public Works ("Public Works"), and all written communications hereunder with the COUNTY shall be addressed to the Director of Public Works ("Director").

**WHEREAS**, the COUNTY has need for special services and advice with respect to the work described herein for the Habitat Restoration and Enhancement Services at the Broderson property for the Los Osos Wastewater Project (hereafter, the "Project"); and

**WHEREAS**, the CONSULTANT warrants that it is specially trained, experienced expert, and competent to perform such special services.

**NOW, THEREFORE**, the parties agree with the above recitals, and hereby further agree as follows:

**ARTICLE 1. SCOPE OF WORK.** The CONSULTANT shall, at its own cost and expense, provide all the services, equipment, and materials necessary to complete the work described in the CONSULTANT's Scope of Work (hereafter, collectively "Work") attached hereto as Exhibit A. CONSULTANT warrants and represents that said Work encompasses all services, equipment, and materials necessary for the CONSULTANT's habitat restoration and enhancement services. All Work shall be performed to the highest professional standard.

**ARTICLE 2. TIME FOR COMPLETION OF WORK.** No Work shall be commenced prior to the CONSULTANT's receipt of the COUNTY's Notice to Proceed. All Work shall be completed no later than December, 31, 2020, provided, however, that extensions of time may be granted in writing by the Director of Public Works of San Luis Obispo County, which said extensions of time, if any, shall be granted only for reasons attributable to inclement weather, acts of God, or for other cause determined in the sole discretion of the Director of Public Works of San Luis Obispo County to be good and sufficient cause for such extensions.

**ARTICLE 3. PAYMENT FOR SERVICES.**

A. **COMPENSATION.**

1. COUNTY shall pay to CONSULTANT as compensation in full for all Work required by this Agreement a sum not to exceed the total Agreement amount of \$435,992.00 (four hundred thirty-five thousand, nine hundred ninety-two dollars).

2. Progress payments will be made to CONSULTANT based on compensable services provided and allowable costs incurred at the rates set forth in the CONSULTANT's Cost Proposal attached hereto as Exhibit B. All payments to CONSULTANT shall be based on actual services performed and costs incurred at the rates set forth in Exhibit B.

3. The COUNTY reserves the right to delete Work from CONSULTANT's Scope of Work, but that such deletion must be in writing from the County's Public Works Director that expressly states that certain Work is being deleted. CONSULTANT shall be entitled to no compensation for any Work that is deleted.

B. **REPORTS.** The CONSULTANT shall submit to the COUNTY, on a monthly basis, a detailed statement of all services performed and all Work accomplished under this Agreement since the CONSULTANT's last monthly statement, including the number of hours of Work performed and the personnel involved. For the purpose of timely processing of invoices, the CONSULTANT's invoices are not regarded as received until the monthly report is submitted. Any anticipated problems in performing any future Work shall be noted in the monthly reports. The CONSULTANT shall also promptly notify the County of any perceived need for a change in the scope of Work,

and an explanation as to why the CONSULTANT did not include said Work in the attached Scope of Work.

C. **INVOICES.** Billing invoices shall be based upon the CONSULTANT's Cost Proposal, attached hereto as Exhibit B. Invoices shall detail the Work performed on each task and each project as applicable. Invoices shall follow a format based upon the Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due the COUNTY including any equipment purchased under the provisions of Article 23 Equipment Purchase of this Agreement.

D. **CONSULTANT'S ASSIGNED PERSONNEL.** All Work performed under this Agreement shall be performed by the CONSULTANT's personnel identified in the organizational chart, attached hereto as Exhibit C. Any changes to the personnel designated on this organizational chart must be approved in writing by the COUNTY's Project Manager.

#### **ARTICLE 4. ACCOUNTING RECORDS.**

A. The CONSULTANT shall maintain accounting records in accordance with generally accepted accounting principles. The CONSULTANT shall obtain the services of a qualified bookkeeper or accountant to ensure that accounting records meet this requirement. The CONSULTANT shall maintain acceptable books of accounts which include, but are not limited to, a general ledger, cash receipts journal, cash disbursements journal, general journal, and payroll journal.

B. The CONSULTANT shall record costs in a cost accounting system which clearly identifies the source of all costs. Agreement costs shall not be co-mingled with other project costs, but shall be directly traceable to contract billings to the COUNTY. The use of worksheets to produce billings shall be kept to a minimum. If worksheets are used to produce billings, all entries should be documented and clearly traceable to the CONSULTANT's cost accounting records.

C. All accounting records and supporting documentation shall be retained for a minimum of five (5) years or until any audit findings are resolved, whichever is later. The CONSULTANT shall safeguard the accounting records and supporting documentation.

D. The CONSULTANT shall make accounting records and supporting documentation available on demand to the COUNTY and its designated auditor for inspection and audit. Disallowed costs shall be repaid to the COUNTY. The COUNTY may require having the CONSULTANT's accounting records audited, at the CONSULTANT's expense, by an accountant licensed by the State of California. The audit shall be presented to the County Auditor-Controller within thirty (30) calendar days after completion of the audit.

**ARTICLE 5. (INTENTIONALLY OMITTED)**

**ARTICLE 6. NON-ASSIGNMENT OF AGREEMENT.** Inasmuch as this Agreement is intended to secure the specialized services of the CONSULTANT, the CONSULTANT may not assign, transfer, delegate, or sublet any interest herein without the prior written consent of the COUNTY and any such assignment, transfer, delegation, or sublease without the COUNTY's prior written consent shall be considered null and void.

**ARTICLE 7. INSURANCE.** The CONSULTANT, at its sole cost and expense, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable) and shall provide products/completed operations coverage for four (4) years following completion of the CONSULTANT's Work under this Agreement and acceptance by the County. Any failure to comply with reporting provisions(s) of the policies referred to above shall not affect coverage provided to the County, its officers, employees, volunteers, and agents. For purposes of the insurance policies required hereunder, the term "County" shall include officers, employees, volunteers, and agents of the County of San Luis Obispo, California, individually or collectively.

A. **MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.** The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the County:

1. **COMMERCIAL GENERAL LIABILITY (“CGL”).** Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein “ISO”) Commercial General Liability coverage. (Occurrence Form CG0001) with policy limits not less than the following:

- \$1,000,000 each occurrence;
- \$1,000,000 for personal injury liability;
- \$1,000,000 aggregate for products-completed operations; and
- \$1,000,000 general aggregate.

The general aggregate limits shall apply separately to the CONSULTANT’s Work under this Agreement.

2. **BUSINESS AUTOMOBILE POLICY (“BAP”).** Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability Coverage, Code 1 “Any Auto” (Form CA 0001). This policy shall include a minimum (combined single limit) of not less than One-million (\$1,000,000) dollars for each occurrence, for bodily injury and/or property damage. Such policy shall be applicable to vehicles used in pursuit of any of the activities associated with this Agreement. The CONSULTANT shall not provide a Comprehensive Automobile Liability policy which specifically lists scheduled vehicles without the express written consent of County.

3. **WORKERS’ COMPENSATION AND EMPLOYERS’ LIABILITY (“WC / EL”).** This policy shall include at least the following coverages and policy limits:

- a. Workers’ Compensation insurance as required by the laws of the State of California; and
- b. Employer’s Liability Insurance Coverage B with coverage amount not less than one-million (\$1,000,000) dollars each accident / Bodily Injury (herein “BI”); one-million (\$1,000,000) dollars policy limit BI by disease; and, one-million (\$1,000,000) dollars each employee BI by disease.

4. **PROFESSIONAL LIABILITY (“PL”).** This policy shall cover damages, liabilities, and costs incurred as a result of the CONSULTANT’s professional errors and omissions or malpractice. This policy shall include a coverage limit of at least One-Million Dollars (\$1,000,000) per claim, including the annual aggregate for all claims (such coverage shall apply during the performance of the services under

this Agreement and for three (3) years thereafter with respect to incidents which occur during the performance of this Agreement). The CONSULTANT shall notify the County if any annual aggregate is eroded by more than seventy-five percent (75%) in any given year.

B. **DEDUCTIBLES AND SELF-INSURANCE RETENTIONS.** Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by the CONSULTANT and approved by the County before Work is begun pursuant to this Agreement. At the option of the County, the CONSULTANT shall either reduce or eliminate such deductibles or self-insured retentions as respect the County, its officers, employees, volunteers, and agents, or shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

C. **ENDORSEMENTS.** All of the following clauses and endorsements, or similar provisions, are required to be made a part of insurance policies indicated in parentheses below:

1. A “Cross Liability”, “Severability of Interest” or “Separation of Insureds” clause (CGL & BAL);
2. The County of San Luis Obispo, its officers, employees, volunteers, and agents are hereby added as additional insureds with respect to all liabilities arising out of the CONSULTANT’s performance of Work under this Agreement (CGL & BAP);
3. This policy shall be considered primary insurance with respect to any other valid and collectible insurance County may possess, including any self-insured retention County may have, and any other insurance County does possess shall be considered excess insurance only and shall not be called upon to contribute to this insurance (CGL, BAP, & PL);
4. No cancellation or non-renewal of this policy, or reduction of coverage afforded under the policy, shall be effective until written notice has been given at least thirty (30) calendar days prior to the effective date of such reduction or cancellation to County at the address set forth below (All Policies);

5. The CONSULTANT and its insurers shall agree to waive all rights of subrogation against the County, its officers, employees, volunteers, and agents for any loss arising under this Agreement (WC); and

6. Deductibles and self-insured retentions must be declared (All Policies).

D. **ABSENCE OF INSURANCE COVERAGE.** The County may direct the CONSULTANT to immediately cease all activities with respect to this Agreement if it determines that the CONSULTANT fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of Work and change of insurance shall be considered the CONSULTANT's delay and expense. At the County's discretion, under conditions of lapse, the County may purchase appropriate insurance and charge all costs related to such policy to the CONSULTANT.

E. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.**

Prior to commencement of Work under this Agreement, and annually thereafter for the term of this Agreement, the CONSULTANT, or each of the CONSULTANT's insurance brokers or companies, shall provide the County a current copy of a Certificate of Insurance, on an Accord or similar form, which includes complete policy coverage verification, as evidence of the stipulated coverages. All of the insurance companies providing insurance for the CONSULTANT shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

Andrew Anderson, Public Works Department  
Room 206, County Government Center  
San Luis Obispo CA 93408

## **ARTICLE 8. INDEMNIFICATION.**

A. The CONSULTANT shall defend, indemnify and hold harmless the COUNTY, its officers, agents, and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities, or other losses (hereafter, collectively "claims") that may be asserted by any person or entity, and that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. The

parties agree that, in addition to the CONSULTANT's general and professional duties of care, the CONSULTANT has a duty of care to act in accordance with the terms of this Agreement. In addition to whatever other acts or omissions of CONSULTANT that constitute negligence, recklessness, or willful misconduct under applicable law, the parties acknowledge that any act or omission of the CONSULTANT that causes any damages or monetary losses, and constitutes a breach of any duty under, or pursuant to, this Agreement, shall at a minimum constitute negligence (and may constitute recklessness or willful conduct if so warranted by the facts).

B. The preceding paragraph applies to any and all such claims, regardless of the nature of the claim or theory of recovery. For purposes of the paragraphs found in this Article of the Agreement, "CONSULTANT" shall include the CONSULTANT, and/or its agents, employees, subcontractors, or other independent contractors hired by, or working under, the CONSULTANT.

C. It is the intent of the parties to provide the COUNTY the fullest indemnification, defense, and "hold harmless" rights allowed under the law. No provisions of this Agreement shall be construed in a manner that would constitute a waiver or modification of Civil Code section 2782.8. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this contract and the remaining language shall be given full force and effect. Nothing contained in this Agreement shall be construed to require the CONSULTANT to indemnify the COUNTY against any responsibility or liability in contravention of Civil Code 2782.8.

**ARTICLE 9. CONSULTANT'S RESPONSIBILITY FOR ITS WORK.**

A. The CONSULTANT has been hired by the COUNTY because of the CONSULTANT's specialized expertise in performing the Work described in the attached Scope of Work, Exhibit A. The CONSULTANT shall be solely responsible for such Work. The COUNTY's review, approval, and/or adoption of any designs, plans, specifications, or any other Work shall be in reliance on the CONSULTANT's specialized expertise and shall not relieve the CONSULTANT of its sole responsibility for the Work. The COUNTY is under no duty or obligation to review or verify the appropriateness, quality, or accuracy of any designs, plans, specifications, or any

other Work, including but not limited to, any methods, procedures, tests, calculations, drawings, or other information used or created by the CONSULTANT in performing any Work under this Agreement.

B. All information which the CONSULTANT receives from the COUNTY should be independently verified by the CONSULTANT. The CONSULTANT should not rely upon such information unless it has independently verified its accuracy. The only exception to the foregoing arises when the COUNTY has expressly stated in writing that certain information may be relied upon by the CONSULTANT without the CONSULTANT's independent verification. In such event, the CONSULTANT is still obliged to promptly notify the COUNTY whenever the CONSULTANT becomes aware of any information that is inconsistent with any information which the COUNTY has stated may be relied upon by the CONSULTANT.

C. Pursuant to the provisions of this Article, the CONSULTANT is responsible for all Work under this Agreement, including the Work performed by any subcontractors or any other independent contractors which CONSULTANT hires or contracts with regarding the Work.

D. The CONSULTANT accepts the relationship of trust and confidence established with COUNTY by this Agreement, and covenants with the COUNTY to furnish the CONSULTANT's reasonable skill and judgment in furthering the interests of the COUNTY. The CONSULTANT shall use its best efforts to perform in an expeditious and economical manner consistent with the interests of the COUNTY.

E. If CONSULTANT ever has reason to believe that any of its general or professional duties of care conflict with any requirements of this Agreement, the CONSULTANT shall promptly so notify the COUNTY in writing.

**ARTICLE 10. INSURANCE AND INDEMNIFICATION AS MATERIAL PROVISIONS.**

The parties expressly agree that the indemnification and insurance clauses in this Agreement are an integral part of the performance exchanged in this Agreement. The compensation stated in this Agreement includes compensation for the risks transferred to the CONSULTANT by the indemnification and insurance clauses.

**ARTICLE 11. CONSULTANT'S ENDORSEMENT ON REPORTS, ETC.** The CONSULTANT shall endorse all reports, maps, plans, documents, materials, and other data in accordance with applicable provisions of the laws of the State of California.

**ARTICLE 12. DOCUMENTS, INFORMATION AND MATERIALS OWNERSHIP.** All documents, information, and materials of any and every type prepared by the CONSULTANT (or any subcontractor) pursuant to this Agreement shall be the property of the COUNTY. Such documents shall include but not be limited to data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONSULTANT (or any subcontractor) in performing Work under this Agreement, whether completed or in process. The CONSULTANT shall assume no responsibility for the unintended use by others of any such documents, information, or materials on project(s) which are not related to the scope of services described under this Agreement.

**ARTICLE 13. TERMINATION OF AGREEMENT WITHOUT CAUSE.** The COUNTY may terminate this Agreement at any time by giving the CONSULTANT thirty (30) calendar days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Other than payments for services satisfactorily rendered prior to the effective date of said termination, the CONSULTANT shall be entitled to no further compensation or payment of any type from the COUNTY.

**ARTICLE 14. TERMINATION OF AGREEMENT FOR CAUSE.** If the CONSULTANT fails to perform the CONSULTANT's duties to the satisfaction of the COUNTY; or if the CONSULTANT fails to fulfill in a timely and professional manner the CONSULTANT's obligations under this Agreement; or if the CONSULTANT violates any of the terms or provisions of this Agreement; or if the CONSULTANT, or the CONSULTANT's agents or employees fails to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the COUNTY, then the COUNTY shall have the right to terminate this Agreement effective immediately upon the COUNTY giving written notice thereof to the CONSULTANT. Termination shall have no effect upon the

rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. The CONSULTANT shall be paid for all Work satisfactorily completed prior to the effective date of such termination. If the COUNTY's termination of the Agreement for cause is defective for any reason, including but not limited to the COUNTY's reliance on erroneous facts concerning the CONSULTANT's performance, or any defect in notice thereof, this Agreement shall automatically terminate without cause thirty (30) calendar days following the COUNTY's written notice of termination for cause to the CONSULTANT, and the COUNTY's maximum liability shall not exceed the amount payable to the CONSULTANT under Article 13 above.

**ARTICLE 15. COMPLIANCE WITH LAWS.** The CONSULTANT shall comply with all Federal, State, and local laws and ordinances that are applicable to the performance of the Work of this Agreement. This includes compliance with prevailing wage rates and their payment in accordance with the California Labor Code. The CONSULTANT acknowledges that labor performed on site to support any Work required under this Agreement is a public work within the meaning of Labor Code Section 1720. The CONSULTANT will comply, or cause its subconsultant(s) to comply, with the provisions of Labor Code Section 1774.

**ARTICLE 16. COVENANT AGAINST CONTINGENT FEES.** The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percent, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, the COUNTY shall have the right to annul this Agreement without liability or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**ARTICLE 17. DISPUTES & CLAIMS.**

A. **EXCLUSIVE REMEDY.** Any demand or assertion by CONSULTANT seeking any additional compensation and/or time extension, or other relief, for any reason whatsoever (hereafter collectively "Claim"), must be in strict compliance with the requirements of this Article 17. For purposes of this Article 17, any and all Work relating to any such demand or assertion shall be referred to as "Disputed Work", regardless of whether the basis of the demand or assertion arises from an interpretation of the Agreement, an action or inaction of CONSULTANT or COUNTY, or any other event, issue, or circumstance. If the Disputed Work relates to any Work performed by any subcontractors or subconsultants hired by CONSULTANT in compliance with the provisions of this Agreement, any such Claims must also be processed by CONSULTANT in accordance with the provisions of this Article 17.

The administration of a Claim as provided in this Article 17, including CONSULTANT's performance of its duties and obligations specified in this Article 17 is CONSULTANT's sole and exclusive remedy for disputes of all types pertaining to the payment of money, extension of time, the adjustment or interpretation of the Agreement or other contractual or tort relief arising from Agreement. Compliance with the procedures described in this Article 17 is a condition precedent to the right to file a Government Code Claim, commence litigation, or commence any other legal action. CONSULTANT waives the right to pursue or submit any Claims not processed in accordance with Article 17.

B. **MANDATORY PROCEDURE AND CONDITION PRECEDENT.** The requirements set forth in this Article 17 are mandatory, and CONSULTANT shall strictly comply with these requirements. Strict compliance with these requirements is a condition precedent to CONSULTANT's ability to exercise any rights or remedies that may otherwise be available to CONSULTANT under the Agreement or any applicable Laws or Regulations relating to the Claim. No action or inaction by CONSULTANT and/or COUNTY to try to resolve any Claim(s) through agreement, amendment, mediation, settlement, or any other means shall excuse CONSULTANT from strictly complying with the requirements of this Article 17. CONSULTANT shall bear all costs incurred in complying with the provisions of this Article 17.

C. **NOTICE OF POTENTIAL CLAIM.** The CONSULTANT shall not be entitled to any additional compensation and/or time under this Agreement for any act, or failure to act, by the COUNTY, or for the happening of any event, thing, occurrence, or other cause, unless the CONSULTANT has provided the COUNTY's Public Works Director with timely written Notice of Potential Claim as hereinafter specified. The written Notice of Potential Claim shall set forth the reasons for which the CONSULTANT believes additional compensation and/or time will or may be due, the nature of the cost involved, and, insofar as possible, the full amount of additional compensation and/or time extension sought in relation to the potential claim. The said notice as above required must have been given to the COUNTY prior to the time that the CONSULTANT shall have performed any Disputed Work. It is the intention of this paragraph that differences between the parties relating to this Agreement be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The CONSULTANT hereby agrees that it shall have no right to additional compensation and/or time regarding any Claim for which no written Notice of Potential Claim as herein required was filed with the COUNTY Director of Public Works.

D. **NOTICE OF FINAL CLAIM.** As soon as reasonably practical upon completion of the Disputed Work, and no later than 30 days after completion of the Disputed Work, CONSULTANT shall provide to COUNTY a Notice of Final Claim containing a full and final documentation of the Claim that provides the following information:

1. A detailed factual narration of events fully describing the nature and circumstances that caused the dispute, including, but not limited to, necessary dates, locations, and items of Work affected by the dispute.
2. The specific provisions of the Agreement that support the Claim and a statement of the reasons these provisions support and provide a basis for entitlement of the Claim.
3. When additional monetary compensation is requested, the exact amount requested, including an itemized breakdown of individual costs. These costs shall be segregated into the following cost categories:

- a. Labor – A listing of individuals, classifications, hours and dates worked, hourly labor rates, and other pertinent information related to the requested reimbursement of labor costs.
- b. Materials/ Equipment – Invoices, purchase orders, location of materials/ equipment used to perform the Disputed Work, dates they were used, and other pertinent information related to the requested reimbursement of material/ equipment costs. (Any applicable equipment rates shall be at the applicable State rental rate as listed in the Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates," in effect when the Disputed Work was performed.)
- c. Other categories as specified by COUNTY.

E. **CONSULTANT'S CONTINUING OBLIGATIONS.** Neither the filing of a Notice of Potential Claim or of a Notice of Final Claim, nor the pendency of a dispute or claim, nor its consideration by the COUNTY, shall excuse the CONSULTANT from full and timely performance in accordance with the terms of this Agreement. CONSULTANT shall promptly respond to any requests for further information or documentation regarding CONSULTANT's potential or final Claim. If CONSULTANT fails to provide an adequate written response to COUNTY within 15 days of COUNTY's written request for such further documentation or information, CONSULTANT shall be deemed to have waived its Claim. If the further documentation or information requested by COUNTY, in the opinion of the COUNTY, reasonably take the CONSULTANT more than 15 days to comply with, the written request shall provide the CONSULTANT a specific response deadline that is commensurate to a reasonable response time.

F. **RESPONSE TO NOTICE OF FINAL CLAIM.** The COUNTY shall respond in writing to the Notice of Final Claim within 60 days of receipt thereof Claim, or may request, in writing, within 45 days of said receipt, any additional information or documentation relating to the Claim or any defenses to the Claim the COUNTY may have against the CONSULTANT. CONSULTANT shall comply with the request within the reasonable time deadline provided by COUNTY in the request. If any additional information is thereafter requested by COUNTY, it shall likewise be provided by CONSULTANT within the reasonable time deadline provided by COUNTY in such

follow-up request. The written response to the Notice of Final Claim shall be submitted to the CONSULTANT within 30 days after receipt of such further information and documentation, or within a period of time no greater than that taken by the CONSULTANT in producing the additional information or documentation, whichever is greater. CONSULTANT may request an informal conference to meet and confer for settlement of the issues in dispute, but CONSULTANT shall have no right to demand such a conference. Neither the requesting of any such conference by CONSULTANT or COUNTY, nor the holding of such conference shall affect the date of the final decision on the Claim. No written communications of COUNTY sent to CONSULTANT after any such conference will change the date of the final decision on the Claim unless the writing expressly states that the date of the final decision is being changed to a new specific date.

A Claim may be granted in whole or in part only by a written response that contains the signature of the COUNTY's Public Works Director or his authorized representative. In the event a valid written decision is not provided to CONSULTANT within the time prescribed in this Article 17, the Claim shall be deemed denied on the last day a written response was due. The date upon which the Claim is approved or denied pursuant to the provisions of this Article 17, shall constitute the date of the final decision on the Claim under the provisions of this Article 17. The date of the final decision on a Claim can only be changed by a subsequent writing signed by COUNTY that expressly states that the date of the final decision on the Claim has been changed to a new specific date.

**G. GOVERNMENT CODE CLAIM REQUIREMENTS.** For all Claims not resolved as a result of these Article 17 procedures, CONSULTANT must submit each Claim in a Government Code Section 910 form of claim for final investigation and consideration of its settlement prior to initiation of any litigation on any such Claim, as required by Government Code Section 945.4. Pursuant to Government Code Section 930.2, the one-year period in Government Code Section 911.2 is hereby reduced to 150 days. This time deadline is measured from the accrual date of each separate cause of action. The time deadline for filing a Government Code claim shall not be tolled by any action or inaction by CONSULTANT or COUNTY, including but not limited to any action or inaction to try to resolve the Claim through negotiation, mediation,

settlement, agreement (including Change Order), or by any other means, other than by a separate written tolling agreement expressly approved as to form (on the face of the agreement) by the County Counsel's Office.

**ARTICLE 18. CONSULTANT IS AN INDEPENDENT CONTRACTOR.** It is expressly understood that in the performance of the services herein provided, the CONSULTANT shall be, and is, an independent contractor, and is not an agent or employee of the COUNTY. The CONSULTANT has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons assisting the CONSULTANT in the performance of the services rendered hereunder. The CONSULTANT shall be solely responsible for all matters relating to the payment of its employees, including compliance with Social Security, withholding, and all other regulations governing such matters.

**ARTICLE 19. ENTIRE AGREEMENT AND MODIFICATION.** This Agreement supersedes all previous agreements and constitutes the entire understanding of the parties hereto. The CONSULTANT shall be entitled to no other compensation and/or benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both parties. Any changes increasing the CONSULTANT's compensation and/or benefits must be approved by the COUNTY's Board of Supervisors; any other changes may be signed by the County Director of Public Works on behalf of the COUNTY. The CONSULTANT specifically acknowledges that in entering into and executing this Agreement, the CONSULTANT relies solely upon the provisions contained in this Agreement and no others. To the extent there is any inconsistency between the text in the body of this Agreement and anything in any of the Exhibits attached hereto, the text in the body of this Agreement shall prevail.

**ARTICLE 20. ENFORCEABILITY.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

**ARTICLE 21. WARRANTY OF CONSULTANT.** The CONSULTANT warrants that the CONSULTANT and each of the personnel employed or otherwise retained by the CONSULTANT for Work under this Agreement are properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to.

**ARTICLE 22. SUBCONTRACTORS.**

A. Other than Work designated in Exhibits A and B to be performed by other persons or entities, the CONSULTANT shall perform the Work contemplated with resources available within its own organization and no portion of the Work shall be subcontracted without written authorization by the COUNTY. In the event the COUNTY provides written authorization for Work to be performed by a subcontractor, the use of the words “subcontractor” and “subcontract” in this Article shall refer to such authorized subcontracting to a subcontractor of the first tier or any other tier. The terms “subcontract” and “subcontractor” include any and all contracts or arrangements by which CONSULTANT hires or enters into a contract with any subconsultants regarding any Work.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the County and any subcontractors, and no subcontract shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the COUNTY for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its subcontractors is an independent obligation from the COUNTY's obligation to make payments to the CONSULTANT.

C. Any subcontract entered into by the CONSULTANT relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word “CONSULTANT” where it appears in this Article.

D. Any substitution of subcontractors must be approved in writing by the COUNTY's Project Manager in advance of assigning Work to a substitute subcontractor.

**ARTICLE 23. EQUIPMENT PURCHASE.**

A. Prior authorization in writing, by the COUNTY's Project Manager, shall be required before the CONSULTANT enters into any unbudgeted purchase order or subcontract exceeding \$5,000 for equipment. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs and three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

B. Any equipment purchased as a result of this Agreement is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the COUNTY shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, the CONSULTANT may either keep the equipment and credit the COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit the COUNTY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the COUNTY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the COUNTY."

**ARTICLE 24. APPLICABLE LAW AND VENUE.** This Agreement has been executed and delivered in the State of California and the validity, enforceability, and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**ARTICLE 25. NOTICES.** Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by first class mail to the County at:

Mr. Wade Horton, Director  
San Luis Obispo County  
Department of Public Works  
County Government Center, Room 206  
San Luis Obispo, CA 93408

And to the CONSULTANT:

Kevin Merk, Principal  
Kevin Merk Associates, LLC  
1330 Van Beurden Drive, Suite 103  
Los Osos, CA 93402

**ARTICLE 26. COST DISCLOSURE - DOCUMENTS AND WRITTEN REPORTS.**

Pursuant to Government Code section 7550, if the total cost of this Agreement is over \$5,000, the CONSULTANT shall include in all final documents and in all written reports submitted a written summary of costs, which shall set forth the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such documentation or written report. The Agreement and subagreement numbers and dollar amounts shall be contained in a separate section of such document or written report.

**ARTICLE 27. CONFIDENTIALITY OF DATA.**

- A. All financial, statistical, personal, technical, or other data and information relative to the COUNTY's operations, which are designated confidential by the COUNTY and made available to the CONSULTANT in order to carry out this Agreement, shall be protected by the CONSULTANT from unauthorized use and disclosure, and shall not be made available to any individual or organization by the CONSULTANT without the prior written approval of the COUNTY.
- B. Permission to disclose information on one occasion, or public hearing held by the COUNTY relating to this Agreement, shall not authorize the CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. All information related to the construction estimate is confidential, and shall not be disclosed by the CONSULTANT to any entity other than the COUNTY.

**ARTICLE 28. RESTRICTIVE COVENANT.** The CONSULTANT agrees that it will not, during the continuance of this Agreement, perform or otherwise exercise the services described in Exhibit A for anyone except for the COUNTY, unless and until the COUNTY waives this restriction.

**ARTICLE 29. QUALITY CONTROL AND QUALITY ASSURANCE.** The CONSULTANT shall provide a description of its Quality Control procedure. The process shall be implemented for all facets of Work and a QC-QA statement and signature shall be placed on all submittals to the COUNTY.

**ARTICLE 30. CLAIMS FILED BY THIRD PARTIES.**

A. If claims are filed against the COUNTY by any other third party that relates in any way to any Work product within the CONSULTANT's Scope of Work under this Agreement, and additional information or assistance from the CONSULTANT's personnel is requested by the COUNTY in order to evaluate or defend against such claims, the CONSULTANT agrees to cooperate with and provide timely response to any reasonable requests for information submitted to the CONSULTANT by the COUNTY relating to such claims. To the extent the information requested by the COUNTY only seeks documents or other factual information relating to Work performed by the CONSULTANT, the CONSULTANT will only be compensated for any clerical costs associated with providing the COUNTY the requested documents or factual information.

B. The CONSULTANT's personnel that the COUNTY considers essential to assist in defending against such claims will be made available for consultation with the COUNTY upon reasonable notice from the COUNTY. In the event the expert opinions of the CONSULTANT's personnel is sought by the COUNTY through such consultation or through testimony, and only in such event, such consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the CONSULTANT's personnel services under this Agreement. In the event the testimonies of any of the CONSULTANT's personnel are sought by another party, the CONSULTANT reserves the right to charge other party a different rate for deposition or trial testimony.

C. Services of the CONSULTANT's personnel in connection with the third party claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this agreement in order to finally resolve the claims.

D. Any subcontract entered into by the CONSULTANT relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "CONSULTANT" where it appears in this Article.

**ARTICLE 31. CONFLICT OF INTEREST.**

A. The CONSULTANT shall disclose any financial, business, or other relationship with the COUNTY that may be affected by the outcome of this Agreement, or any ensuing COUNTY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing COUNTY construction project, which will follow.

B. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

C. Any subcontract entered into by the CONSULTANT relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "CONSULTANT" where it appears in this Article.

D. The CONSULTANT hereby certifies that neither the CONSULTANT, nor any firm affiliated with the CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of one or more of the same persons through joint-ownership, or otherwise.

E. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this Agreement shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement.

IN WITNESS THEREOF, the parties hereto have executed this Agreement, and this Agreement shall become effective on the date shown signed by the County of San Luis Obispo.

**COUNTY OF SAN LUIS OBISPO**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chairperson of the Board  
County of San Luis Obispo  
State of California

**ATTEST:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
County Clerk and Ex-Officio Clerk of the  
Board of Supervisors, County of San Luis Obispo,  
State of California

**CONSULTANT**

By: Kevin Merk Date: 2-23-15  
Name: Kevin Merk  
Title: Principal

**APPROVED AS TO FORM AND LEGAL EFFECT:**

RITA L. NEAL  
County Counsel

By: [Signature] Date: 2/20/15  
*Chief* Deputy County Counsel

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Exhibit "A"  
Scope of Work

**PROPOSAL TO PROVIDE HABITAT RESTORATION  
AND ENHANCEMENT SERVICES  
FOR THE  
LOS OSOS WASTEWATER PROJECT  
REQUEST FOR PROPOSAL PS-#1289**

*Prepared for:*

**San Luis Obispo County**  
**Department of General Services**  
1087 Santa Rosa Street  
San Luis Obispo, California 93408  
ATTENTION: Missy Viles

*Prepared by:*



**Kevin Merk Associates, LLC**  
P.O. Box 318  
San Luis Obispo, California 93406

**Contact:**

Kevin Merk, Principal Biologist  
805-748-5837 (office)/805-439-1616 (fax)  
[kmerk@kevinmerkassociates.com](mailto:kmerk@kevinmerkassociates.com)  
[www.kevinmerkassociates.com](http://www.kevinmerkassociates.com)

*Revised February 6, 2014*

#### **4. UNDERSTANDING OF AND APPROACH TO THE PROJECT**

##### **4a. Summary Of Approach**

Our approach to the restoration of the Broderson site is based on following the approved methods and requirements detailed in the HMP and the project Biological Opinion (BO). We will use local experts with demonstrated experience in native habitat restoration, weed abatement, and Morro shoulderband snail biology. Our goal will be to help the County meet the required success criteria in the timeframe established in the HMP, in an efficient and cost-effective manner, while minimizing impacts to the Morro shoulderband snail and native habitat elements present on the project site. Our reliance on herbicide use rather than physical removal of veldt grass (*Ehrharta calycina*) will result in minimal soil disturbance and associated soil seed bank exposure and erosion, limit root damage to adjacent native shrubs, and reduce direct impacts to MSS, especially juveniles typically present in veldt grass areas. As the veldt grass biomass decays onsite, it will provide mulch and nutrients back to the soil, and facilitate germination and growth of the native seed mix.

The work effort will begin with a labor-intensive veldt grass eradication effort based on application of grass-selective herbicide, and concurrent native seed collection. It is envisioned that the first and second year's efforts will drastically reduce the cover of non-native species on the site. Seed application, additional seed collection as needed, and ongoing less intensive weed eradication efforts will continue for the remaining three years of the five-year project. All restoration work on the site, and all reporting for the project, will be directed by USFWS-approved biologists (i.e.: the Project Biologist). Our use of the California Conservation Corps for the bulk of the labor requirement will provide the County with a trained, equipped, and dedicated work crew, at a reasonable cost over the five-year maintenance and monitoring period. The crew approach utilized by the Corps will allow a more intensive work effort in a shorter period of time, improving accuracy of removal efforts while reducing repetitive impacts to the sensitive plants and soils in the area, and endangered Morro shoulderband snail.

Monitoring and data collection will occur per the schedule and requirements listed in the HMP. KMA key personnel, primarily Bob Sloan, will coordinate with the County's Project Manager throughout the course of the project. Bob Sloan will be the primary point of contact for the project, and will ensure Annual Monitoring Reports are prepared and submitted before December 1 of each year.

##### **MSS Avoidance Measures**

As stated above, all restoration work on the Broderson site will be directed and monitored by USFWS-approved biologists. At this time, Bob Sloan and/or Dwayne Oberhoff will act as MSS biologists to ensure full compliance with the requirements of the Biological Opinion. As the work effort progresses, KMA biologists Kevin Merk, Melinda Elster, and Julie Thomas are expected to gain the experience necessary to apply for USFWS listing on the Biological Opinion.

All members of the KMA team will be trained to recognize the species and suitable habitat locations, and in methods to conduct work activities while avoiding and minimizing potential impacts, prior to beginning work on the site. No herbicide application or other disturbance activity will be performed during or immediately following a rain event, or during heavy fog conditions, to reduce potential for impacts to active MSS. All herbicide application and manual weed removal efforts will be conducted under dry conditions, when MSS are unlikely to be active. To reduce disturbance to

MSS habitat, the majority of herbicide application will utilize hand carried or backpack type sprayers. Seeding will be conducted under dry conditions during winter months, preferably several days before a predicted rain event.

#### MSS Survey Proposed Methodology and Rationale

As required by the B.O., approved biologists conducted 100 percent coverage pre-construction surveys over the densely vegetated eight-acre Broderson Leach Field, and a total of 33 MSS were found and relocated before the site was graded. MSS occurrence in the Leach Field was scattered, and included large areas with no presence. Typically, when present, several individuals were found in close proximity to each other. The veldt grass removal area is also densely vegetated, but unlike the adjacent Leach Field, will not be disturbed by grubbing, grading or other construction activities. No native shrubs will be disturbed or removed. Disturbance will consist primarily of walking through the site while applying herbicide to non-native grasses and iceplant using backpack sprayers. As appropriate, a limited use of power spraying may occur along the perimeter adjacent to existing roads. Use of herbicide and portable sprayers will reduce the potential for impacts to MSS, with the most potentially significant impacts being trampling and the exposure to herbicide. Clearance surveys, proper training and monitoring will minimize trampling impacts and the potential effects of herbicide on MSS.

Due to the size and density of veldt grass occurrence on the site, performance of 100 percent coverage surveys as conducted for the Leach Field prior to each herbicide application would be very time consuming, and would increase project costs dramatically. Given the minimal vegetative and soil disturbance proposed, we have developed the following survey procedure designed to minimize costs while providing adequate coverage and discovery of MSS present in vegetation to be sprayed.

Immediately prior to each herbicide application, and before biomass removal efforts, our approved biologists will conduct a survey of the work areas to capture and relocate MSS. While we will generally follow presence/absence survey protocol, our efforts will be focused on veldt grass clumps and other weed species where herbicide will be applied. We will not examine native shrubs or associated leaf litter where veldt grass is not present, or areas where veldt grass growth is too sparse to conceal MSS.

The surveys will consist of a team of biologists moving systematically across the site capturing all adult and juvenile MSS observed within treatment areas. Following the *Morro Shoulderband Capture and Relocation Methodology* (County of San Luis Obispo 2012) and agency guidance, we will relocate individuals to an approved site. The Project Biologist will continue to conduct spot checks while monitoring herbicide application and weed removal activities, and capture and relocate all MSS observed within the disturbance area. As veldt grass cover decreases over the five-year program, survey effort time requirements will also decrease.

#### Herbicide Application Methods and Materials

All herbicide applications will be directly supervised by Charles "Chip" Tamagni of A&T Arborists. Chip is a certified California State Pest Control Advisor and possesses a valid Qualified Applicator License. If Chip is not available for a scheduled application date, A&T Arborists co-owner Steven Alvarez, also a certified California State Pest Control Advisor and Qualified Applicator License holder, will be onsite to supervise the work effort. Herbicide application will be conducted by a team composed of KMA staff (primarily Kevin Merk and Bob Sloan) and California Conservation

Corps crewmembers using portable backpack sprayers. All herbicide will be mixed by Chip or Steven in a truck-mounted tank, from which the backpack sprayers will be filled. A power sprayer and hose system will be used along existing roadways around the perimeter of the sites where vehicle access and the hose will not cause damage to native vegetation and MSS habitat.

As detailed in the HMP, and discussed in the 2014 USFWS Draft Environmental Assessment for the Guadalupe-Nipomo Dune National Wildlife Refuge, we will utilize the grass-specific herbicide Arrow 2EC™ as the primary agent for initial spray efforts. We will also utilize other grass-specific herbicides such as Fusillade™ and/or Poast™ for one application each year, to reduce per-acre application rates of a single chemical, and to ensure control of any plants that develop a resistance to the Arrow 2EC™.

To meet the success criteria described in the HMP, we propose to apply herbicide and conduct weeding activities on three (3) separate occasions during the first year. Years 2 and 3 would be reduced to two separate application/weed removal periods, and Years 4 and 5 will receive one application. MSS clearance surveys would occur immediately prior to each herbicide treatment and any intensive weeding activities, and the Project Biologist would be onsite to monitor all field crews when conducting work on the project site. Signage would be posted at all key trails and access points to notify the public of the herbicide application and ongoing restoration effort.

#### Seeding Methodology

The site will be seeded with the collected native seed stocks beginning in December of 2016 (Year 2), after the majority of veldt grass has been killed. Seed application will be scheduled to occur several days prior to predicted rain events, and will be conducted by KMA staff, *slo starts*, and supported by Corps crewmembers. Broadcast seeding will consist of lightly raking bare soil areas to create ridges, scattering the seed onto the raked areas, and then applying a thin layer of mushroom compost to cover the seed to ensure soil contact. Mushroom compost will provide a light cover of seeded materials and will also help promote continued decomposition of the veldt grass material. As appropriate, we may also utilize rice straw as a mulch to cover seed treatment areas.

Since the Conservation Corps has their own hydroseed equipment, we may use hydroseed application where veldt grass monocultures are removed such as those adjacent to the Broderson trail and near the Alexander Avenue entrance to the site. We estimate less than 2 acres total will require hydroseed application. The majority of seed application will be applied using broadcast seeding methods, and then covering the area with a light application of mushroom compost or another weed free mulch such as rice straw. Hydroseeding, if employed, will be performed by the Corps, using their hydroseeding equipment, collected native seed, and industry standard wood fiber mulch slurry.

A detailed discussion of our approach to the five Project Work Tasks listed in Section 2 of the RFP is presented below.

### **Task 1. Habitat Enhancement and Restoration Activities**

#### Area 1: Leach Field

This eight-acre area was planted and seeded with native species in early 2014, and currently supports a predominance of native plants with a low percentage of veldt grass cover. During recent field reconnaissance, some scattered areas of narrow-leaved iceplant (*Conicosia*

*pugioniformis*) were observed primarily on the east side of the site. First-year restoration efforts in Area 1 will consist of spot spraying veldt grass occurrences with grass selective herbicide. Inflorescences and seed heads will be removed manually where present. The initial herbicide treatment effort is expected to reduce veldt grass presence to a level that can be addressed primarily by hand removal during future years, thereby minimizing further use of herbicides on this portion of the site. The broadleaf herbicides that would be effective on narrow-leaved iceplant would also have potential to harm native plantings on the site. Therefore, control of narrow-leaved iceplant will consist of hand removal of plants and any fruits from the site. Based on our recent assessment of this portion of the site, it appears that plants and seedlings are successfully establishing, and supplemental irrigation may not be required beyond the 2014/2015 rain season.

Due to clearance surveys prior to leach field installation and subsequent planting and seeding efforts, MSS presence in this area is expected to be very low during the first years of the restoration process. Clearance surveys will still be conducted to ensure MSS are avoided during the habitat restoration and enhancement activities, and impacts minimized to the extent allowable in the BO.

#### Area 2: Veldt Grass Removal/Coastal Scrub Habitat Restoration

This 15-acre area includes areas of dense veldt grass cover, areas dominated by eucalyptus trees where little understory vegetation is present, areas of mature coastal scrub habitat intermixed with veldt grass, and remnant areas of escaped ornamental plants along the northern boundary adjacent to existing homes. Veldt grass cover in Area 2 ranges from approximately 40 percent to approximately 80 percent, with densest occurrences located in the eastern portion near the Broderson Trail, north of Area 1. The approach to veldt grass eradication will be based on intensive herbicide application in this location with hand weeding occurring on a more limited basis during the first year followed by a gradual decrease in effort over the remaining four years. Hand removal of dead veldt grass clumps will be conducted over the approximately 2.5-acre eastern portion of the site between the Broderson Trail and the Leach Field boundary. This area is densely covered by veldt grass, and will be sprayed to kill the clumps prior to removal by CCC crews. Following removal efforts, we will monitor native volunteer growth in this area to determine whether hydroseeding would be beneficial.

For Year 1, we propose to conduct three (3) intensive herbicide application and weeding events to dramatically reduce the cover of veldt grass and iceplant within the project area. Each treatment is expected to require multiple days. We will also conduct additional weeding/maintenance events following the schedule detailed in the HMP. Veldt grass control in Area 2 will begin with two (2) herbicide application efforts (one estimated in March 2015 and another in May/June 2015) to kill plants before flower and seed set occurs. We plan to use a twelve-person Conservation Corps crew overseen by the Project Biologist and Qualified Applicator over the course of multiple days during each of the two initial treatments to adequately cover the site. Herbicide would be applied following manufacturer's guidelines at the direction of the Qualified Applicator. Given environmental constraints that are beyond our control (such as high winds or dense fog), we will conduct herbicide application when conditions are suitable and winds are light. Once winds pick up or dense fog rolls in, we would transition our labor crews into hand weeding and other maintenance activities. Another intensive herbicide application will occur in the late fall (estimated for November 2015) along with another round of more intensive hand weeding and site maintenance. As stated above, KMA staff will conduct regular site maintenance and monitoring following the schedule in the HMP. Because our office is located in Los Osos, we will be able to visit the site on a weekly and monthly basis to evaluate the success of the weed removal effort.

Years 2 and 3 will have two (2) intensive herbicide application and weeding events with one scheduled for early spring and another for late fall. Application efforts and herbicide quantities used are anticipated to be reduced due to the intensive first year removal of a significant portion of the non-native species occurrence. Additional site maintenance visits would be conducted by KMA staff during Years 2 and 3 following the schedule included in the HMP. Site seeding is anticipated to commence in December 2016 of Year 2 and would continue into Year 3 as seed is available.

Years 4 through 5 will utilize herbicide applications as needed to control reoccurrences in problem areas such as along the Broderson Trail, and along the western property boundary. Site maintenance and herbicide application will also occur in any remnant areas where the soil seed bank is still producing large amounts of veldt grass seedlings. Small or individual occurrences will be removed by hand tools where possible. As in Area 1, control of narrow-leaved iceplant and other non-native broadleaf species (such as *Carpobrotus* spp.) will consist of hand removal of plants and mature seed heads/fruits that may have dehisced from the plants.

### Area 3: Maritime Chaparral Restoration

This approximately 59-acre portion of the site is densely vegetated with maritime chaparral habitat including pygmy oak (*Quercus agrifolia*) and Morro manzanita (*Arctostaphylos morroensis*). Still, patchy occurrences of veldt grass and other non-native species are present along the Broderson Trail, and other areas of past and ongoing disturbance such as along the western property boundary where horseback riding occurs. Occurrences of veldt grass and other invasive plants within the interior of Area 3 are scattered, and concentrated in openings between and around shrubs and trees. The primary control methods to be used in this area will consist of hand removal of all target species. During the first two years of the project, limited herbicide applications will occur along the eastern and western boundaries to control the dens veldt grass occurrences present in these areas. Areas where veldt grass or other non-native species are sprayed or removed by hand will be broadcast seeded with Seed Mix 3 identified in the HMP. The potential for MSS presence in Area 3 is considered relatively high in areas dominated by coastal scrub plants, and low in areas dominated by maritime chaparral and pygmy oak woodlands. The Project Biologist will oversee all work within this portion of the site to ensure activities are consistent with the BO and HMP.

## **Task 2. Maintenance**

The KMA team will conduct regularly scheduled maintenance efforts throughout the five-year period per the requirements of the HMP and the RFP. Our local office will allow us to conduct weekly and monthly spot checks to identify potential problems before they escalate. We will coordinate closely with the County and USFWS to ensure that methods and actions are effective at meeting the final success criteria while avoiding and minimizing incidental take of MSS.

Maintenance activities are expected to include the following actions:

- regular removal of invasive or exotic plants before seed is set;
- revegetation of areas where damage has occurred or plant cover deficiencies are identified;
- maintain the irrigation system if appropriate;
- regular removal of trash and debris;
- repair of erosion or vandalism damage; and,
- repair fencing and signage as necessary.

Since our office is located in Los Osos, timing and scheduling of maintenance efforts will be flexible to allow a rapid response to changing conditions, unexpected issues and any concerns from the County, involved agencies or public. Due to the accessibility and ongoing public recreational use of the site, public scrutiny and comments on restoration activities can be expected. We are experienced educators and will positively interact with the public and interested individuals to inform them of the habitat management project.

### **Task 3. Data Collection and Monitoring**

The KMA team will monitor the restoration effort at the Broderson site per the schedule, requirements and methodologies identified in the HMP. We will collect qualitative and quantitative data to document site conditions, species diversity, vegetative cover and species percentages, wildlife usage, MSS and other special status species presence, and weed occurrences on the site. Monitoring will be conducted throughout the year to evaluate trends in native and non-native species cover, and to determine the success of the restoration effort. Annual monitoring will determine if the success criteria goals identified in the HMP are being met. We will analyze annual monitoring results to identify patterns or trends in vegetative conditions, and to determine if remedial action is needed to meet the final success criteria defined in the HMP. Data collection will utilize standardized forms as appropriate. Annual monitoring reports, which are discussed further below, will summarize the findings of each year's activities and monitoring results.

### **Task 4. Coordination and Reporting**

KMA key personnel Kevin Merk and Bob Sloan will maintain close working contact with the County's Project Manager throughout the course of the project. Bob Sloan will be the primary point of contact for the project, and Kevin will be available at any time to address the County's needs especially as they pertain to contractual obligations. Kevin and Bob will be available at any time to meet the County Project Manager in the field, at KMA's Los Osos office or at the County's office to review the project, discuss concerns, or evaluate the results of the restoration effort and monitoring program.

Annual Monitoring Reports will be prepared documenting each year's site maintenance efforts and the results of the field data collection. Reports will be submitted in electronic form to the County Project Manager before December 1<sup>st</sup>. The Annual Monitoring Reports will summarize the year's activities, describe current site conditions, and will provide a determination if the project is on track to meet the final success criteria. Methods, results, proposed schedule revisions and other remedial actions or adaptive management strategies to be employed to address unsatisfactory conditions, lessons learned, and photo-documentation, will be included in each report. Each report will also include appropriate graphics and maps using ARC GIS. The Final Report to be prepared in Year 5 will include a detailed account of the project history, MSS clearance survey results, and a summary of each year's monitoring data analysis. It will include a photo plate of photographs from established photo stations to illustrate the gradual removal of veldt grass and other non-native species from the site, and results of the seeding effort.

### **Task 5. Seed Collection**

Seed collection, cleaning, preparation, and storage tasks will be performed by Dagmar Collins of *slo starts*, per the specifications and amounts listed in the HMP and as calculated below. The *slo starts* team collected the native seed stocks used for the restoration of the Mid-Town site per the requirements of the HMP, and they will use similar methods and storage techniques for the

Broderson site. KMA biologists will assist *slo starts* as needed during the collection process. Seed collection efforts will begin immediately upon award of the contract for the project, to ensure that the specified amounts are available following initial non-native species eradication efforts. All necessary collection permits and authorizations will be acquired prior to starting the seed collection effort.

Seed amounts to be collected for the project were calculated based on the 2012 HMP and our knowledge of site conditions and other local restoration projects (i.e.: the Mid-Town Site). The HMP and revised Planting Plan included in RFP identify approximately 19 acres that would require seeding with species included in Seed Mix 3. Based on recent review of site conditions, we estimate that approximately 16 acres (instead of 19 acres) would require seeding within the project site given the cover of existing native species in relation to the veldt grass occurrences to be removed. The 15 acres of Area 2 scheduled for intensive herbicide application and weed removal range from 40 to 80 percent cover of veldt grass. Also present are small areas of ice plant and other escaped ornamentals. The remainder of Area 2 is dominated by native shrubs and eucalyptus trees, which is not suitable for seeding. Seeding under existing native shrubs would disturb soils, roots, and native seed bank. It would also require additional MSS survey efforts, and have higher potential to impact MSS. In addition, seeding under the eucalyptus tree canopy would result in very poor germination rates due to shading and allelopathic properties in the understory.

Based on these assumptions, it is expected that only 15 acres of Area 2 would require seeding. We anticipate an additional one acre of seeding will be required for small weed removal areas along the upper portion of the Broderson Trail (Area 3), and within the Leach Field (Area 1). In addition, as demonstrated at Mid-Town, seed collected by *slo starts* was high quality, and we expect good germination and growth rates for the seed applied to the Broderson site. This may allow lighter application rates, especially when the native seed bank is expressed following veldt grass removal. The Leach Field also shows consistent cover of the native seeded and planted material, and we feel that the restoration goals and success criteria can be accomplished using the 16-acre estimate discussed above when calculating the total seed collection quantity. Ultimately final collection quantities will follow Seed Mix 3 species ratios in the HMP.

# Exhibit "B"

## Cost Proposal

**County of San Luis Obispo  
Revised Budgetary Cost Estimate for Habitat Restoration and Enhancement Services for the Los Osos Wastewater Project - RFP PS- #1289**

Task	Cost	Hours	Principal Biologist \$125/hr	Project Biologist \$95/hr	Associate Biologist \$75/hr	Field Biologist \$55/hr	GIS Tech \$75/hr	Qualified Applicator* \$105/hr	Labor* \$20/hr	Admin Assist \$55/hr
<b>Task 1 Habitat Restoration and Enhancement Activities</b>										
<b>Year 1 2015</b>										
MSS Clearance Surveys (prior to 3 herbicide treatments)	\$33,960	456	24	120	120	192				
Herbicide Application/Weed Removal - 3 intensive treatments	\$54,045	1,305	16	150				175	960	4
Inflorescence and Seed Removal	\$6,340	172	8	20		16			128	
MSS Clearance Surveys (prior to biomass removal)	\$6,400	80	8	24	24	24				
Biomass Removal (assumes approx. 2.5 acres)	\$6,740	220	8	20					192	
<b>Year 2 2016</b>										
MSS Clearance Surveys (prior to 2 herbicide treatments)	\$16,400	208	16	64	64	64				
Herbicide Application/Weed Removal - 2 intensive treatments	\$17,730	406	8	48				60	288	2
Initial Seeding Effort	\$12,220	428	12	32					384	
Hydroseed Biomass Removal Area (as deemed appropriate)**	\$2,030	46	2	12					32	
<b>Year 3 2017</b>										
MSS Clearance Surveys (prior to 2 herbicide treatments)	\$16,400	208	16	64	64	64				
Herbicide Application/Weed Removal - 2 intensive treatments	\$12,190	274	8	32				40	192	2
Supplemental Seeding Effort	\$8,380	236	12	32					192	
<b>Year 4 2018</b>										
MSS Clearance Surveys (prior to herbicide treatment)	\$6,400	80	8	24	24	24				
Herbicide Application/Weed Removal - 1 treatment	\$6,095	137	4	16				20	96	1
<b>Year 5 2019</b>										
MSS Clearance Surveys (prior to herbicide treatment)	\$6,400	80	8	24	24	24				
Herbicide Application/Weed Removal - 1 treatment	\$6,095	137	4	16				20	96	1
<b>Task 2 - Maintenance</b>										
<b>Year 1</b>	\$7,800	92	8	32		32		18	128	2
<b>Year 2</b>	\$6,255	73	6	28		24		14	144	1
<b>Year 3</b>	\$5,415	65	4	24		24		12	120	1
<b>Year 4</b>	\$4,775	57	4	24		20		8	160	1
<b>Year 5</b>	\$4,095	49	2	24		16		6	128	1
<b>Task 3 - Data Collection and Monitoring</b>										
<b>Year 1</b>	\$4,365	51	8	16	12	8	6			1
<b>Year 2</b>	\$3,965	47	6	16	12	8	4			1
<b>Year 3</b>	\$3,715	45	4	16	12	8	4			1
<b>Year 4</b>	\$3,715	45	4	16	12	8	4			1
<b>Year 5</b>	\$4,475	53	4	24	12	8	4			1
<b>Task 4 - Agency Coordination and Annual Reporting for 5 years</b>	\$37,340	380	100	216		40				24
<b>Task 5 - Seed Collection, Cleaning, Storage (SLO Starts)</b>	\$95,432	0								
<b>Project Management and Scheduling for 5 Years</b>	\$17,500	168	78	70						20
<b>Expenses (Field/Safety Equip., Herbicide, Hauling, Compost, Supplies)</b>	\$19,320									
<b>Total Budget Estimate</b>	<b>\$435,992</b>	<b>5,430</b>	<b>390</b>	<b>1,204</b>	<b>380</b>	<b>564</b>	<b>62</b>	<b>373</b>	<b>2,560</b>	<b>65</b>

\* assumes A&T Arborists will be the Qualified Applicator and California Conservation Corps will provide labor support.

\*\*Hydroseeding may be used as appropriate based on field conditions. If colonization by native species is observed, hydroseeding may be inappropriate.



Kevin Merk Associates, LLC

# Exhibit "C" Consultant's Organizational Chart

